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**Testimony In Opposition To Raised Bill 5817
An Act Concerning Resources Recovery Facilities
Offered by the Housatonic Resources Recovery Authority
By Cheryl D. Reedy, Director
March 7, 2008**

For the record, my name is Cheryl D. Reedy, and I am the Director of the Housatonic Resources Recovery Authority ("HRRA"), a regional public agency administering the municipal solid waste ("MSW") and recycling system for eleven municipalities in western Connecticut, including Bethel, Bridgewater, Brookfield, Danbury, Kent, New Fairfield, New Milford, Newtown, Redding, Ridgefield and Sherman. We are organized by concurrent resolutions of our member municipalities under Chapter 103b of the Connecticut General Statutes as a regional resources recovery authority. Thank you for the opportunity to provide testimony in opposition to RB 5817.

HRRA Treated Differently Than All Other Resources Recovery Authorities Under RB 5817

As the Bill is currently written, we believe that the residents of the municipalities constituting HRRA would be treated differently than the municipalities served by the five other Resources Recovery Authorities ("RRA"s) in the State because HRRA does not own or contract with a specific resources recovery facility ("RRF") but instead contracts with Wheelabrator Connecticut Inc. ("Wheelabrator") directly to take all of the MSW from our region to any of its facilities that have available capacity. HRRA is the only RRA in the State without the problematic public vs private RRF ownership relationship in its MSW disposal system contemplated by this Bill. It appears to us that the RB 5817 will apply only to HRRA and Wheelabrator, our contract counterpart, and to Wheelabrator's Connecticut RRFs where HRRA's MSW is taken.

Our region's system was created with the expectation, which has been maintained from 1993 to the present, that private trash collectors throughout the region would directly pay Wheelabrator for the privilege of "tipping" the MSW they collect in the region at the system transfer stations within the HRRA region. None of our region's 11 municipalities provides municipal collection services. In all 11 municipalities private collectors pay the "tipping fee" directly to Wheelabrator without any impact on municipal budgets.

HRRA's contract with Wheelabrator, which was signed in 1993 and amended in 2004, does not expire until 2019. The contract provides for several services, including disposal of the MSW as well as operation of the transfer stations in the region and transportation of the MSW from the transfer stations to whichever of its facilities Wheelabrator chooses for the ultimate disposal of the MSW. Under our contract, each of those services was priced separately by negotiation with Wheelabrator at a fixed price for the term of the contract, subject to adjustment annually in an amount to reflect one half of the change in Consumer Price Index from year to year. The Wheelabrator charges under the contract for the separate services are currently as follows:

Disposal Fee	\$65.87 per ton
Transfer Fee	\$ 5.43 per ton
Transport Fee	\$ 8.03 per ton

In addition, HRRRA adds an Administrative Fee of \$.58 per ton to the above fees collected by Wheelabrator, so that total per ton charge to the private trash collectors for the privilege of "tipping" the MSW they collect is currently \$79.90. Administrative Fee funds HRRRA's activities for the entire 11 town region, including registration of local collectors throughout region, public recycling education and household hazardous waste administration. HRRRA is pleased with the economics of contract with Wheelabrator and the format of our "system," and sees no reason for that contract or system to be upset in manner by new legislation. Our system "ain't broke" and we see no need to "fix" it!

We are very much concerned that intervention by the DPUC in Wheelabrator's pricing of any "tipping fee or other fee disposal of municipal solid waste" (Section 1, line 5 of the Bill) at its Bridgeport or other resources recovery facilities Connecticut will result in an unnecessary regulatory incursion into our contract with Wheelabrator. It is not clear to HRRRA extent to which the DPUC ratemaking authority under the proposed Bill would attach to only the so-called "Disposal Fee" under our contract or whether it would extend to the total fee charged to trash collectors, including the HRRRA Administrative Fee.

Possible Impairment of HRRRA's Contract With Wheelabrator Connecticut, Inc.

Section 1 of the proposed Bill contains only two exceptions from its prohibition against any "owner or operator of resources recovery facility" (Section 1(a), line 2) charging any "tipping fee or other fee for disposal of . . . municipal solid waste . . . at such facility in excess of the rate approved by the [DPUC]" (Section 1(a), lines 5-7). The first exception, contained in subsection 1(a)(1) of the proposed Bill, applies to exempt any **owner or operator** of a RRF that is "(1) a quasi-public authority, political subdivision of the state, operating committee established pursuant to subsection (c) of section 22a-221 of the general statutes or regional or municipal authority. . . ." (Section 1(a)(1), lines 10-13). Because HRRRA is not an owner or operator of RRF, that exception does not apply to us.

Nor does the second exception, contained in section 1(a)(2) of the proposed Bill, appear to apply to HRRRA's relations with Wheelabrator. That exception applies to a private owner or operator of an RRF (that is, an entity not included in subsection 1(a)(1)) that, on the date of the enactment of the proposed Bill "has a written contract with an **operating committee** for disposal of municipal solid waste . . . at such facility **and the operating committee establishes** the tipping fee. . . ." (Section 1(a)(2), lines 14-17)(Emphasis supplied). HRRRA is a regional resources recovery authority established under Chapter 103b of the general statutes, not an "operating committee." Furthermore, HRRRA does not "establish" the tipping fee at the "facility." The "tipping fee" under our contract with Wheelabrator was established by negotiation and applies not only to Wheelabrator's "resources recovery facilities" in Connecticut but also to any of Wheelabrator's other disposal options both within and outside Connecticut.

We do not, of course, know what the result of the DPUC regulatory process will bring. It is not certain to us, however, that it will necessarily result in lower trash collection costs for the residents of HRRRA's municipal Members. We do know that HRRRA would have to participate in the regulatory process to protect its residents' interests, and that participation would be costly. HRRRA's annual revenue is approximately \$350,000. We have one employee. HRRRA does not have the financial resources or representation in the DPUC rate setting process. We understand that legal counsel to assist in making our case to DPUC for

HRRA program Administrative Fee we require to keep our organization financially afloat could cost as much as an entire year's budget. An expense of even half that magnitude is simply not warranted for a system we think currently works exceptionally well. These are expenses that no other municipalities in the State will be asked to endure.

We would argue that any attempt by the State to interfere with our Wheelabrator contract is inconsistent with Article Section 10 of the U.S. Constitution that provides, in part, that "No State shall . . . pass any Law impairing the Obligation of Contracts"

Even if the proposed Bill were to apply only to the "Disposal Fee" under our Wheelabrator contract, and were to result in the DPUC attempting to **reduce** the "Disposal Fee" for our benefit, it is unclear to us how Wheelabrator would not challenge the statutory scheme as imposing on its contractual rights. We further fear that reduction of the Disposal Fee by the DPUC could result in Wheelabrator also seeking to avoid its contractual obligations under the contract. Again, HRRA sees no benefit to residents of its region in any such uncertainty.

Amendment to the Proposed Bill to Exempt HRRA's System

We would prefer that the proposed bill not be adopted and that market forces be allowed to continue to influence and tip fees in Connecticut. As an alternative, however, in order to exempt HRRA's system from the DPUC regulatory ratemaking process contained in the proposed Bill, we would suggest adding a third exemption at the end of Section 1(a), as follows:

, provided further that the provisions of this section shall not apply to any tipping fee or other fee for disposal of municipal solid waste or ash residue at such a facility set in accordance with the terms, and applicable during the term of any extension, of a written contract in existence on the effective date of this section with a regional resources recovery authority for disposing municipal solid waste or ash residue, or any amendment thereof.

Significant Competition Already Exists in the Connecticut MSW Disposal Market

Connecticut produces more MSW than the State has capacity to dispose of in its current resources recovery facilities. The state exports about 350,000 MSW tons per year. It is out of state disposal options, including rail transfer, that currently provide the greatest downward market pressure on in-state tip fees, as cited in the State Solid Waste Management Plan, and shown by both the City of Stamford's recent bid results and the City of Norwalk's current bidding process. The winning bid in Stamford proposed to bale and shrink wrap that city's MSW and haul it by truck to a railroad transloading facility located in our region in Newtown, CT.

It appears that privately owned RRFs would be treated differently than any of the other disposal options available to municipalities in the State, including publicly owned RRFs, private out-of-state disposal vendors, and in-state rail transloading facilities, all of which would be able under the proposed Bill to set their own rates absent DPUC intervention, having a level playing field. Publicly owned RRFs already have an advantage because they do not pay taxes like private facilities. Rail transloading facilities also have a financial advantage since they are exempted from local and state environmental regulations and permitting by the Federal Surface Transportation Act.

HRRA's experience with tip fee increases under our contract with a private sector company shows what long term fees might look like with private, unregulated ownership of RRFs in the state. While the CPI has risen 57% over the first six years of our contract with Wheelabrator Connecticut, the tip fee that HRRA trash collectors pay has increased by only 2.4% at that time. When our tip fee got out of line with the market a few years ago, local trash collectors responded by leaving the system and finding less expensive disposal options. HRRA and Wheelabrator re-negotiated our contract to bring prices in line with

market, and local collectors responded by bringing their MSW back into the system so that now we capture virtually 100% of MSW in the region. Tip fee setting has to be flexible and able to respond quickly to market changes, something that is difficult under a regulated system.

RB 5817 Inconsistent With CT Solid Waste Management Plan

The Connecticut Solid Waste Management Plan provides in part, "The following general principles will guide implementation of CT's Solid Waste Management Plan: [under the section entitled Economic Efficiency and Environmental Sustainability] . . . *To the extent possible, waste management systems will be designed to harness and take advantage of market forces. This allows programs to be highly resilient and adapt to new circumstances over time, such as changes in markets and technologies.*" (emphasis added) Governmental rate setting of solid waste disposal fees is only appropriate when a monopoly exists that impedes the operation of market forces. No monopoly exists today in CT for solid waste disposal and it is unlikely a monopoly will exist after the expiration of public contracts with private resources recovery facilities.

Resolution of CRRA Bridgeport Area Towns Negotiation Should Not Impact Other RRAs in State

We understand the uncertainty that the Connecticut Resources Recovery Authority and its Bridgeport project municipalities face right now in the midst of contract negotiations with Wheelabrator. But, understanding that concern does mean that we agree that they should be able to settle their own uncertainty by passing it on to other resources recovery authorities and municipalities in the state. We believe that CRRA and its affected municipalities should negotiate with Wheelabrator in good faith to resolve that uncertainty rather than look to short cut the process through state legislation that affects parties well beyond those involved in the negotiations.

As for HRRA, we would prefer to rely on the competitive MSW disposal market in Connecticut to obtain the lowest disposal rate for our regional trash collectors when our contract with Wheelabrator expires in 2019. Until then, we ask that the MSW disposal system that has worked well for so many years, simply be left alone to continue serving the residents of our region without any unnecessary interference.